



Leading Business Organizations in the U.S. Issue Joint Statement in Opposition to Australian Government’s Proposed Tobacco Plain/Standardized Packaging Legislation

Washington, DC (June 1, 2011) – The U.S. Chamber of Commerce, the National Association of Manufacturers, the United States Council for International Business, the National Foreign Trade Council, the Emergency Committee for American Trade, the US-ASEAN Business Council and the TransAtlantic Business Dialogue today issued a joint statement regarding a proposal being considered by the Australian Government to mandate standardized plain packaging for all tobacco products.

The business groups stated, “We recognize the right of the Australian Government to implement regulation to control tobacco products. However, plain packaging risks establishing a precedent of IP destruction for an entire industry through government mandate that would be very damaging to the legitimate interests of trademark owners to associate their brands with their products, a fundamental protection under trademark law.”

They also pointed out, “Furthermore, protecting intellectual property rights and advancing public health are mutually reinforcing. Australia has always been willing to stand up for trade rules, and we have stood up with it to advance the global trading system. We are strongly convinced that the plain/generic packaging proposal will have a detrimental effect on the integrity of the protection of intellectual property around the world, while its potential effects on public health are not encouraging either. The effects of enacting an obvious violation of those rules such as plain packaging should concern the Australian Government enough to seek alternative approaches consistent with its international trade obligations.”

A copy of the complete statement is below.

For additional information please contact:

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US Council for International Business
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U.S. Business Community Statement in Opposition to Australian Government's Proposed Tobacco Plain/Standardized Packaging Legislation

Australia's plain packaging proposal raises serious questions about its conformity with Australia's international trade obligations that concern us greatly.

We recognize the right of the Australian Government to implement regulation to control tobacco products. However, plain packaging risks establishing a precedent of intellectual property destruction for an entire industry through government mandate that would be very damaging to the legitimate interests of trademark owners to associate their brands with their products, a fundamental protection under trademark law. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) states very clearly that trademarks cannot be required to be used in a special form, as they would be with plain packaging. The limited exceptions allowed under TRIPS do not extend to restrictions such as plain packaging which break apart the nature of the trademark in contravention of WTO rules.

Moreover, we have genuine concerns that plain packaging will incentivize further the already growing incidence of counterfeit, smuggled and other illicitly traded goods being sold in Australia. There can be little question that plain packaging will make it easier for contraband or counterfeit products to enter the market. This will augment the inevitable downward pressure on prices of legally sold goods when brands are undermined and the market moves toward commoditization. The economic incentives to avoid the legal system will overwhelm any enforcement effort detailed in the legislation. As a country that has supported the Anti-Counterfeiting Trade Agreement (ACTA), Australia should be particularly concerned about these consequences.

Australia's wine and beverage, processed food, clothing, manufacturing and creative industries – all of which rely on intellectual property and trademarks for their identity - employ hundreds of thousands of Australians and account for up to a quarter of Australia's exports. Without the surety of internationally enforceable rules to provide trademark protection, the success of those businesses in the international marketplace cannot be secured.

As representatives of American and international business, we rely on the rules-based international trade framework and its supporters to sustain economic growth, employment, innovation and prosperity. Furthermore, protecting intellectual property rights and advancing public health are mutually reinforcing. Australia has always been willing to stand up for trade rules, and we have stood up with it to advance the global trading system. We are strongly convinced that the plain/generic packaging proposal will have a detrimental effect on the integrity of the protection of intellectual property around the world, while its potential effects on public health are not encouraging either. The effects of enacting an obvious violation of those rules such as plain packaging should concern the Australian Government enough to seek alternative approaches consistent with its international trade obligations.